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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/981,422
Filing Date: October 17, 2001
Appellant(s): DISPENSA, STEVE

MAILED

OCT 02 2007

Technology Center 2100

Kyle J. Way
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed July-2-2007 appealing from the Office action mailed June-1-2006.

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(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences, which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments*

The statement of the status of the Amendment contained in the brief is correct.

(5) *Summary of claimed subject matter*

The summary of the claimed subject matter is contained in the brief is correct.

(6) *Grounds of Rejection to be reviewed on appeal*

The following ground(s) of rejection are applicable to the appealed claims:

- (i) Claims 1-11, 13-16, 18, 19, 27-41, 43-46, 48, 49, 57-70, 72-75, 77, 78, 86-104, 106, 107, 115-133, 135, 136, 144-161, 163, 164 and 172-175 are rejected under 35 U.S.C. 103(a) as being unpatentable over Groath et al (6,571,933) in view of Dev et al (5,751,933).
- (ii) Claims 17, 47, 76, 105, 134 & 162 are rejected under 35 U.S.C. 103(a) as being unpatentable over Groath et al (U.S. 6,571,285) and Moura et al (U.S. 6,411,606).

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(iii) Claims 20, 50, 79, 108, 137 and 165 are rejected under 35 U.S.C. 103(a) as being unpatentable over Groath et al (U.S. 6,571,285) and Opoczynski et al (U.S. 5,519,830).

(iv) Claims 21-26, 51-56, 80-85, 109-114, 138-143 and 166-171 are rejected under 35 U.S.C. 103(a) as being unpatentable over Groath et al (U.S. 6,571,285), Opoczynski et al (U.S. 5,519,830) and Moura et al (U.S. 6,411,606).

This rejection is set forth in a prior office action, mailed on June 1, 2006 which is herein incorporated by reference in its entirety.

The detained grounds of rejection that are of issue in this Examiner's answer are disclosed in detail in the Final Office Action mailed to the applicant on June 1, 2006.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,571,285	Groath et al.	05-2003
5,751,933	Dev et al.	05-1998
5,519,830	Opoczynski et al.	05-1996
6,411,606	Moura et al.	06-2002

(9) Grounds of Rejection

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1- 11, 13-16, 18-19, 27-41, 43-46, 48-49, 57-70, 72-75, 77-78, 86-104, 106-107, 115-133, 135-136, 144-161, 163-164 & 172-175 are rejected under 35 U.S.C. 103(a) as being unpatentable over Groath et al (U.S. 6,571,285) and Dev et al (U.S. 5,751,933).

3. As per claims 1, 12, 31, 42, 61, 68, 71, 90, 119 & 148 Groath disclosed a performance management system for providing performance information of a communication network (col.10, lines 1-5), the performance management system comprising: a reporting system configured to generate and transmit a graphical overview of the communication network to a user system, process the instruction to determine the performance information, generate a graphical format of the performance information (col.35, lines 10-15), and transmit the graphical format of the performance information from the performance management system to the user system (col.10, lines 5); and a database system configured to store the performance information (col.10,

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lines 15-24) and the graphical format of the performance information (col.11, lines 43-62){Groath disclosed that the collected performance data is stored in the database and is then conveyed graphically to disclose the availability of the network, hence the performance data has to be stored in some form of graphical format in the database (col.10 on lines 21-24) . However Groath did not explicitly disclose, receive an instruction to request the performance information for a selected region of the communication network from a user system. In the same filed of endeavor Dev disclosed receive an instruction to request the performance information for a selected region of the communication network from a user system (co.2, lines 35-40, col.5, lines 20-38, col.12, lines 42-67 & col.12, lines1-9).

At the time the invention was made it would have been obvious to one in the ordinary skill in the art to incorporate presenting performance information relating to a selected region as disclosed by Dev in the system of providing performance management information of a communication network as disclosed by Groath in order to make the system more versatile and robust by giving the user the option to target the appropriate areas of the network that need to be closely analyzed for performance.

4. As per claim 2, 32, 62, 91, 120 & 149 Groath-Dev disclosed the method of claim 1 wherein the graphical format is a web page (col.69, lines 34-40 & col.91, lines 50-54).

5. As per claims 3, 33, 63, 92, 121 & 150 Groath-Dev disclosed the method of claim 1 wherein the graphical format is a report (col.35, lines 10-15).

6. As per claims 4, 34, 64, 93, 122 & 151 Groath-Dev disclosed the method of claim 1 wherein the graphical format is a screen (col.69, lines 53-55 and also see figures 23-28).

7. As per claims 5, 35, 65, 94, 123 & 152 Groath-Dev disclosed the method of claim 1 wherein processing the instruction to determine the performance information comprises retrieving the performance information (col.13, lines 8-51).

8. As per claims 6, 36, 66, 95, 124 & 153 Groath-Dev disclosed the method of claim 5 wherein retrieving the performance information is from a probe device (col.14, lines 12-26 & col.18, lines 5-10).

9. As per claims 7, 37, 67, 96, 125 & 154 Groath-Dev disclosed the method of claim 6 wherein retrieving the performance information from the probe device comprises: generating and transmitting a message to request performance information from the probe device; and receiving the performance information from the probe device (col.18, lines 5-40).

10. As per claims 8, 38, 97, 126 & 155 Groath-Dev disclosed the method of claim 5 wherein retrieving the performance information is from a memory in the performance management system (See Table 39 from columns 167 to 170).

11. As per claims 9, 39, 69, 98, 127 & 156 Groath-Dev disclosed the method of claim 1 wherein processing the instruction to determine the performance information comprises calculating the performance information (col.25, lines 66-67 & col.26, lines 1-5).

12. As per claims 10, 40, 70, 99, 128 & 157 Groath-Dev disclosed the method of claim 1 further comprising monitoring the performance information in the communication network (col.10, lines 1-14).

13. As per claims 11, 41, 100 & 129 Groath-Dev disclosed the method of claim 1 further comprising storing the performance information in memory of the performance management system (col.18, lines 5-50).

14. As per claims 13, 43, 72, 101, 130 & 158 Groath-Dev disclosed the method of claim 1 wherein the communications network uses wireless signals (col.1, lines 31-39).

15. As per claims 14, 44, 73, 102, 131 & 159 Groath-Dev disclosed the method of claim 1 wherein the communications network uses broadband wireless signals (col.1, lines 31-39).

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16. As per claims 15, 45, 74, 103, 132 & 160 Groath-Dev disclosed the method of claim 1 wherein the performance information comprises a number of modems (col.31, lines 15-24).

17. As per claims 16, 46, 75, 104, 133 & 161 Groath-Dev disclosed the method of claim 1 wherein the performance information comprises forward error correction information (col.51, lines 60-67 & col.52, lines 1-2).

18. As per claims 18, 48, 77, 106, 135 & 163 Groath-Dev disclosed the method of claim 1 wherein the performance information comprises number of bytes (See figures 14 & 15 and col.107 & 108 - table-18).

19. As per claims 19, 49, 78, 107, 136 & 164 Groath-Dev disclosed the method of claim 1 wherein the performance information comprises speed of transmission (col.107, table 18).

20. As per claims 27, 57, 86, 115, 144 & 172 Groath-Dev disclosed the method of claim 1 wherein the instruction comprises a region of the communication network (col.10, lines 10-22 & figure 18).

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21. As per claims 28, 58, 87, 116, 145 & 173 Groath-Dev disclosed the method of claim 1 wherein the instruction comprises an Internet Protocol address (col.173, tables 40 & 41).

22. As per claims 29, 59, 88, 117, 146 & 174 Groath-Dev disclosed the method of claim 1 wherein the instruction comprises a user identification (col.72, lines 37-67 & col.73, lines 1-37).

23. As per claims 30, 60, 89, 118, 147 & 175 Groath-Dev disclosed the method of claim 1 wherein the instruction comprises a time or date (col.18, lines 15-17 & col.20, lines 1-15).

Claim Rejections - 35 USC § 103

24. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

25. Claims 17, 47, 76, 105, 134 & 162 are rejected under 35 U.S.C. 103(a) as being unpatentable over Groath et al (U.S. 6,571,285) and Moura et al (U.S. 6,411,606).

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26. As per claims 17, 47, 76, 105, 134 & 162 Groath disclosed the method of claim 1. However Groath did not explicitly disclose wherein the performance information comprises signal to noise ratio. Moura disclosed wherein the performance information comprises signal to noise ratio (col.10, lines 13-15).

Therefore at the time the invention was made it would have been obvious to one in the ordinary skill in the art to incorporate signal to noise ratio parameter taught by Moura as a part of the performance category in the performance information system taught by Groath to facilitate in providing a full spectrum view of a communication network for analysis.

27. Claims 20-26, 50-56, 79-85, 108-114, 137-143 & 165-171 are rejected under 35 U.S.C. 103(a) as being unpatentable over Groath et al (U.S. 6,571,285) and Opoczynski (U.S. 5,519,830).

28. As per claims 20, 50, 79, 108, 137 & 165 Groath disclosed the method of claim 1. However Groath did not explicitly disclose wherein the performance information comprises channel information for a plurality of channels. Opoczynski disclosed wherein the performance information comprises channel information for a plurality of channels (col.3, lines 49-58).

Therefore at the time the invention was made it would have been obvious to one in the ordinary skill in the art to incorporate channel information for a plurality of channels taught by Opoczynski as a part of the performance category in the performance

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information system taught by Groath to facilitate in providing a full spectrum view of a communication network for analysis.

29. Claims 21, 51, 80, 109, 138 & 166 are rejected under 35 U.S.C. 103(a) as being unpatentable over Groath et al (U.S. 6,571,285), Opoczynski (U.S. 5,519,830) and Moura et al (U.S. 6,411,606).

30. As per claims 21, 51, 80, 109, 138 & 166 Groath and Opoczynski disclosed the method of claim 20. However Groath and Opoczynski did not disclose wherein the channels are upstream. Moura disclosed wherein the channels are upstream (col.5, lines 43-49).

Therefore at the time the invention was made it would have been obvious to one in the ordinary skill in the art to incorporate upstream channel taught by Moura as a part of the performance category in the performance information system taught by Groath-Opoczynski to facilitate in providing a full spectrum view of a communication network for analysis.

31. As per claims 22, 52, 81, 110, 139 & 167 Groath and Opoczynski disclosed the method of claim 20. However Groath and Opoczynski did not disclose wherein the channels are downstream. Moura disclosed wherein the channels are downstream (col.5, lines 43-48).

Therefore at the time the invention was made it would have been obvious to one in the ordinary skill in the art to incorporate downstream channel taught by Moura as a part of the performance category in the performance information system taught by Groath-Opoczynski to facilitate in providing a full spectrum view of a communication network for analysis.

32. As per claims 23, 53, 82, 111, 140 & 168 Groath and Opoczynski disclosed the method of claim 20. However Groath and Opoczynski did not disclose wherein the channel information comprises a state of one of the channels. Moura disclosed wherein the channel information comprises a state of one of the channels (col.2, lines 39-60). Therefore at the time the invention was made it would have been obvious to one in the ordinary skill in the art to incorporate information comprising a state of one of the channels taught by Moura as a part of the performance category in the performance information system taught by Groath-Opoczynski to facilitate in providing a full spectrum view of a communication network for analysis.

33. As per claims 24, 54, 83, 112, 141 & 169 Groath and Opoczynski disclosed the method of claim 20. However Groath and Opoczynski did not disclose wherein the channel information comprises a change in a state of one of the channels. Moura disclosed wherein the channel information comprises a change in a state of one of the channels (col.2, lines 58-64).

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Therefore at the time the invention was made it would have been obvious to one in the ordinary skill in the art to incorporate information comprising change in state of one of the channels taught by Moura as a part of the performance category in the performance information system taught by Groath-Opoczynski to facilitate in providing a full spectrum view of a communication network for analysis.

34. As per claims 25, 55, 84, 113, 142 & 170 Groath and Opoczynski disclosed the method of claim 20. However Groath and Opoczynski did not disclose wherein the channel information comprises a number of messages transmitted. Moura disclosed wherein the channel information comprises a number of messages transmitted (col.2, lines 38-60).

Therefore at the time the invention was made it would have been obvious to one in the ordinary skill in the art to incorporate number of messages transmitted in channel information taught by Moura as a part of the performance category in the performance information system taught by Groath-Opoczynski to facilitate in providing a full spectrum view of a communication network for analysis.

35. As per claims 26, 56, 85, 114, 143 & 171 Groath and Opoczynski disclosed the method of claim 20. However Groath and Opoczynski did not disclose wherein the channel information comprises a time in a state of one of the channels. Moura disclosed wherein the channel information comprises a time in a state of one of the channels (col.2, lines 58-61).

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Therefore at the time the invention was made it would have been obvious to one in the ordinary skill in the art to incorporate a time in a state of one of the channels in channel information taught by Moura as a part of the performance category in the performance information system taught by Groath-Opoczynski to facilitate in providing a full spectrum view of a communication network for analysis.

(10) Response to Arguments

(A) Claims 1-11, 13-41, 43-70 and 72-175 are allowable because Neither Groath nor Dev teach or suggest storing a graphical format of performance information in a repository.

Issue 1: Appellant on page 11 lines 14 & 15 argued that Groath does not teach or suggest storing a graphical format of performance information as provide for in claims 1, 31, 61, 90, 119 and 148.

Before answering appellant's argument the examiner would like to point to appellant's specification regarding the description of graphical format. Page 8 lines 18-18 of appellant's specification state:

"In some embodiments, the graphical format is a web page, a report, or screen".

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Now as to appellant's argument Groath on col.2, lines 6-23 describes a method of providing service assurance for a network to maintain an agreed upon Quality of service in which:

" The data is collected data on the status of the of the network is then manipulated by concatenating the data collected on a network into a master file; reformatting the data into a **standardized format**; translating the data to key codes; sorting the data according to predetermined criteria; and concatenating the sorted data together. **The data is then stored** in a database. Thereafter, network availability is conveyed graphically".

In the above text Groath mentions two key points.

(i) The collected network status data is first concatenated and reformatted into a standard format, then afterwards it is stored in the database and thereafter that data is utilized to convey the network availability graphically.

(ii) Standardized format.

Groath on col.8, lines 45-65 describes the usage of one of the standardized formats to be Hyper Text Markup Language (HTML) format. Groath further states:

"HTML documents are SGML documents with generic semantics that are appropriate for representing information from wide range of domains. HTML has been in use by the World Wide Web global information initiative since 1990".

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One in the ordinary skill in the art would recognize that a HTML is a commonly used format for the presentation of a web page (as stated in appellant's specification) on a World Wide Web.

Therefore in view of the cited disclosures from Groath above it is apparent that Groath discloses collecting, concatenating and then saving the network status information (to include performance) data (col.11, lines 44-51) in standard format (to include HTML) in a database, which is then utilized to present the status information graphically to the user.

Issue 2: Appellant on the first paragraph of page 12 first cited Examiners office action, which stated that "Groath disclosed that the collected performance data is stored in the database and then conveyed graphically to disclose the availability of the network, hence the performance data has to be stored in some form of graphical format in the database." Appellant disagreed and implied that conveying/displaying of the information in the graphical format involved another conversion.

As to appellant's argument Groath is very clear in his disclosure. Groath on col.2, lines 6-23 describes a method of providing service assurance for a network to maintain an agreed upon Quality of service in which:

" The data is collected data on the status of the of the network is then manipulated by concatenating the data collected on a network into a master file; reformatting the data into a **standardized format**; translating the data to key codes;

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sorting the data according to predetermined criteria; and concatenating the sorted data together. **The data is then stored** in a database. Thereafter, network availability is conveyed graphically”.

In the above text Groath mentions two key points.

(i) The collected network status data is first concatenated and reformatted into a standard format, then afterwards it is stored in the database and thereafter that data is utilized to convey the network availability graphically.

(ii) Standardized format.

Groath on col.8, lines 45-65 describes the usage of one of the standardized formats to be Hyper Text Markup Language (HTML) format. Groath further states:

“HTML documents are SGML documents with generic semantics that are appropriate for representing information from wide range of domains. HTML has been in use by the World Wide Web global information initiative since 1990”.

One in the ordinary skill in the art would recognize that a HTML is a commonly used format for the presentation of a web page (as stated in appellant's specification) on a World Wide Web.

Therefore in view of the cited disclosures from Groath above it is apparent that Groath discloses collecting, concatenating and then saving the network status information (to include performance) data (col.11, lines 44-51) in standard format (to include HTML) in

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a database, which is then utilized to present the status information graphically to the user.

Issue 3: Appellant on the last paragraph of page 12 argued that neither Groath nor Dev disclosed storing a graphical format of performance data in a repository or database.

Regarding the description of graphical format appellant's specification on Page 8 lines 18-18 states:

"In some embodiments, the graphical format is a web page, a report, or screen".

Now as to appellant's argument Groath on col.2, lines 6-23 describes a method of providing service assurance for a network to maintain an agreed upon Quality of service in which:

" The data is collected data on the status of the of the network is then manipulated by concatenating the data collected on a network into a master file; reformatting the data into a **standardized format**; translating the data to key codes; sorting the data according to predetermined criteria; and concatenating the sorted data together. **The data is then stored** in a database. Thereafter, network availability is conveyed graphically".

In the above text Groath mentions two key points.

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- (i) The collected network status data is first concatenated and reformatted into a standard format, then afterwards it is stored in the database and thereafter that data is utilized to convey the network availability graphically.
- (ii) Standardized format.

Groath on col.8, lines 45-65 describes the usage of one of the standardized formats to be Hyper Text Markup Language (HTML) format. Groath further states:

“HTML documents are SGML documents with generic semantics that are appropriate for representing information from wide range of domains. HTML has been in use by the World Wide Web global information initiative since 1990”.

One in the ordinary skill in the art would recognize that a HTML is a commonly used format for the presentation of a web page (as stated in appellant's specification) on a World Wide Web.

Therefore in view of the cited disclosures from Groath above it is apparent that Groath discloses collecting, concatenating and then saving the network status information (to include performance) data (col.11, lines 44-51) in standard format (to include HTML) in a database, which is then utilized to present the status information graphically to the user.

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Issue 3: Appellant on page 13 stated that claims 1, 31, 61, 90, 119 and 148 are allowable in view of the combination of Groath and Dev.

In response to appellant's statement examiner respectfully reasserts that claims 1, 31, 61, 90, 119 and 148 are not allowable in view of the combination of Groath and Dev cited in the office action dated June 1, 2006, which is herein incorporated by reference in its entirety.

Issue 4: Appellant on the last paragraph of page 13 stated that since dependent claims 2-11, 13-30, 32-41, 43-60, 62-70, 72-89, 91-118, 120-147 and 149-175 depends form one of the independent claims 1, 31, 61, 90, 119 and 148 therefore they are allowable for the same reason argued above.

As to appellants argument the independent claims as argued are not allowable because Groath clearly anticipates collecting, concatenating and then saving the network status information (to include performance) data (col.11, lines 44-51) in standard format (to include HTML) in a database, which is then utilized to present the status information graphically to the user (see detailed explanation above). Therefore all the corresponding dependent claims are also not allowable.

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(11) Related proceedings appendix

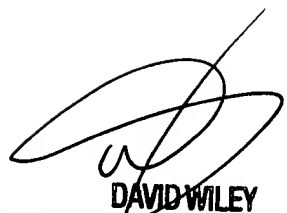
None.

Respectfully submitted,

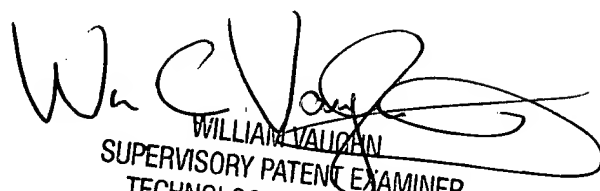


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Art Unit 2143
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